

COURT OF CRIMINAL APPEALS NO. CR-02-2104

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMACIRCUIT COURT NO. CC 2002-1417CIRCUIT JUDGE HOBBSType of Conviction / Order Appealed From: INTENTIONAL MURDERSentence Imposed: LIFE WITHOUT PAROLEDefendant Indigent: YES NO

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NAME OF APPELLANT

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V.

STATE OF ALABAMA

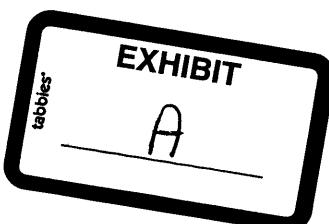
NAME OF APPELLEE

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter
name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)

Part 4 of 5



1 saying. So I spoke back to them.

2 Q. Now you actually saw Eric and
3 Boo. They came up to you?

4 A. Yes.

5 Q. Before y'all got out of the
6 truck, did you see them in the area?

7 A. They was in the alley, I mean,
8 the little -- like where the building
9 is. They standing in the yard between
10 the two buildings.

11 Q. Referring to State's 6, the
12 picture up on the screen?

13 A. Yeah.

14 Q. Is that the two buildings you
15 are talking to?

16 A. Yes.

17 Q. Is that what they are talking
18 about when they say the cut between the
19 two buildings?

20 A. At the cut.

21 Q. Where were they standing?

22 A. Well, they were standing -- you
23 see like that Cadillac right there? They
24 standing about right there, in between
25 that building right there.

1 Q. Closer to the Cadillac?

2 A. You know what I'm saying,

3 that's about where Boo was standing at.

4 Q. Okay.

5 A. Boo standing right there. And
6 see, the Jeep was parked about a little
7 over towards the right by the driver's
8 side of the Cadillac.

9 Q. Okay.

10 A. The Jeep was over a little that
11 way.

12 Q. But basically y'all were parked
13 in between those two buildings?

14 A. Yeah.

15 Q. And Boo came up and spoke to
16 you?

17 A. Yes.

18 Q. And then did you ever get out
19 of the car?

20 A. I got out because my brother
21 had got out. I got out and asked my
22 brother to let me go to the service
23 station. So I went to the service
24 station and came back.

25 Q. Now this is when you very first

1 got there?

2 A. Yeah.

3 Q. You saw them over by the
4 Cadillac and then you got in the car and
5 left?

6 A. I got in the truck and went to
7 the service station.

8 Q. How long did it take you to go
9 to the service station?

10 A. It took me about ten or fifteen
11 minutes. I just went to the Racetrak
12 right up the street.

13 Q. And what did you get up there
14 at the Racetrak?

15 A. A six pack of Coronas and a
16 cigar.

17 Q. For the party?

18 A. Yeah, but the party was over.
19 I was going to drink that just outside,
20 you know what I'm saying.

21 Q. Just you and your brother?

22 A. Yeah, me and my brother.

23 Q. Was anything kind of -- how
24 would you describe the party once y'all
25 got there?

1 A. I ain't heard no music. There
2 were a couple folks outside, you know
3 what I'm saying. It was dead. It
4 supposed to have been my cousin, Chris
5 McQueen's, party. We asked where he
6 was. They said he was in the house
7 asleep, you know what I'm saying. So the
8 party was over with when we got there.

9 Q. Now what was going on when you
10 came back from the store with the cigars
11 and the beer?

12 A. Well, they was out there
13 arguing. So I called -- told Rabbit to
14 tell my brother to come on. Told him to
15 tell Johnny to come on.

16 Q. Who did you tell that to?

17 A. Rabbit.

18 Q. Rabbit?

19 A. Yeah.

20 Q. Now where were you in the truck
21 at this point, the Jeep?

22 A. When I told Rabbit that?

23 Q. Yeah.

24 A. On the driver's side.

25 Q. Where was the Jeep itself?

1 A. Still backed in.

2 Q. You backed in?

3 A. I backed in when I came from
4 the service station.

5 Q. And then what happened?

6 A. I got out and my brother got
7 in, and I went around and got on the
8 passenger side.

9 Q. So correct me if I am wrong,
10 but at this point the Jeep is backed in
11 there and you are on the passenger side?

12 A. I pulled in. I was driving. I
13 backed back in so I told Eric to tell my
14 brother to come on.

15 Q. Okay.

16 A. Because, you know what I was
17 saying, his girlfriend had the truck. So
18 I let him get back in the driver's seat
19 and I got out and went and got back in
20 the passenger's side.

21 Q. I'm going to show you real
22 quick State's 5. Do you recognize that?

23 A. That's the truck.

24 Q. Now, your brother is back in
25 the driver's seat and y'all are both in

1 the Jeep. What happens now?

2 A. Well, they -- they were still
3 arguing.

4 Q. Now, when you say they, who
5 were you --

6 A. James and Darryl.

7 Q. And when you say Darryl, who
8 are you talking about?

9 A. Joyce.

10 Q. Darryl Joyce?

11 A. Yes.

12 Q. What else does he go by?

13 A. Poncho.

14 Q. How did you know it was James
15 and Darryl Joyce out there arguing?

16 A. Because -- I met Darryl through
17 Rabbit.

18 Q. Through Rabbit?

19 A. Yeah. I met him through
20 Rabbit. Rabbit said this his home boy
21 out of prison, from prison. So that's
22 how I knew Darryl. I seen his face
23 once. I remember his face. I ain't
24 never forget it, you know what I'm
25 saying, but I grew up with Boo, you know

1 what I'm saying. So that's how I knew
2 Boo.

3 Q. So you knew all the folks there
4 that night?

5 A. Yeah.

6 Q. And you specifically remember
7 seeing Darryl Joyce and Boo were the ones
8 in the argument?

9 A. Yes.

10 Q. Did you hear what they were
11 arguing about?

12 A. No, I really didn't know what
13 they were arguing about. All I know it
14 was gang stuff, you know, you know what
15 I'm saying, gang related.

16 Q. Back and forth?

17 A. Gang related stuff back and
18 forth.

19 Q. What is the next thing you
20 remember happening?

21 A. Then -- I know I heard Boo say,
22 man, I ain't no proud person. If I
23 wanted to do something to you, I could
24 have got you that night you were asleep
25 on the porch, you know what I'm saying.

1 Q. You heard Boo say that?

2 A. Yeah. Boo said that.

3 Q. What happened next?

4 A. Then that's what I seen the gun
5 up. I seen him shoot him one time in the
6 leg. So by that time he shot him one
7 time in the leg. I'm looking back on the
8 passenger side. He shot towards our
9 truck. He hit our truck three times.
10 Shot the windows out on my side.

11 Q. Now pretend for me and the jury
12 that you were sitting in the truck on the
13 passenger side. Okay. Pretend like the
14 jury box there is the truck.

15 A. All right.

16 Q. How are you looking behind you
17 to see what is going on?

18 A. Just like this.

19 Q. Okay.

20 A. I could see the whole thing.

21 Q. How could you see the whole
22 thing?

23 A. Because you see where the
24 corner of the house right there on the
25 other side where it says 406?

1 Q. Uh-huh (indicating yes).

2 A. That was about where they were
3 at, you know what I'm saying. Boo had
4 made it to about right there when he shot
5 him one time in the leg, you know what
6 I'm saying.

7 Q. Is your window up or is your
8 window down?

9 A. My window was down. My head
10 was hanging out. So I guess that's why
11 they shot at the truck because he seen my
12 head hanging out.

13 Q. Now be a little more clear.
14 Now if this is your window right here,
15 are you just looking back over your
16 shoulder?

17 A. I'm looking like this.

18 Q. Looking out the window?

19 A. Looking just like that.

20 Q. What do you see?

21 A. I see him shoot Boo in the leg
22 one time.

23 Q. Who did you see shoot who?

24 A. Poncho. I seen Poncho shoot
25 Boo.

1 Q. Do you see the person that shot
2 Boo in the courtroom here today?

3 A. Yes.

4 Q. Point him out to the jury.

5 A. That man right there, sir.

6 Q. Did you see that man there that
7 night?

8 A. Yes, sir.

9 Q. How far were you from where you
10 were in the truck back in that cut where
11 you saw him?

12 A. From about -- from the -- the
13 truck was backed all the way to the curb,
14 and he was at the end of the building
15 just standing at the back end of the
16 building about the second window.

17 Q. Put me about where he would
18 have been standing if you are sitting in
19 the truck.

20 A. I'd say about --

21 Q. From me to you?

22 A. Something about thirty feet
23 back.

24 Q. Did he come forward or back
25 up?

1 A. Huh?

2 Q. If I am standing --

3 A. You need to come up some.

4 Q. Come up?

5 A. Yeah. About like that.

6 Q. About right there?

7 A. Yeah.

8 Q. When you looked back in the
9 truck, the guy you saw doing the shooting
10 was standing from me to you?

11 A. Yeah, about that much. That's
12 how he got a chance to shoot at our
13 truck.

14 Q. Now what did you see the
15 defendant do once you turned and were
16 looking out the window of that truck?

17 A. He shot at us three times.
18 Then I was telling my brother pull off.
19 While I'm telling my brother to pull out,
20 I'm still looking, you know what I'm
21 saying, to see if he shoot him again. He
22 already shot him about two or three more
23 times, I guess.

24 Q. And you saw that?

25 A. I saw that. I saw Boo fell.

1 Q. From the truck?

2 A. From the truck.

3 Q. Now once the shooting was over
4 with, what did Darryl Joyce do?

5 A. Take off through the back
6 field.

7 Q. When you say the back field --

8 A. Yeah. Through that way.
9 Through the back.

10 Q. Like toward that tree?

11 A. No. He turned the corner. The
12 building right there, he turned back that
13 way.

14 Q. The other way from the tree?

15 A. Yeah, toward the left side.

16 Q. What did you and your brother
17 do?

18 A. We had pulled -- we had pulled
19 off, you know what I'm saying. Then we
20 backed back. We had went to the corner.
21 I said back on back. We backed on back.
22 That's when we came back and Rabbit was
23 over Boo just like that.

24 Q. Mr. Osborne, is there any doubt
25 in your mind that you saw this person

1 sitting in the courtroom today shoot
2 James Friendly?

3 A. No, I ain't telling no -- I'm
4 telling you the whole truth.

5 Q. Did you know another person at
6 the party named Bryant Thomas?

7 A. No, sir.

8 Q. You didn't know Bryant Thomas
9 or known as B.T.?

10 A. I don't know him.

11 Q. What about a dude named Darryl
12 Foggy?

13 A. No.

14 Q. So all you know is what you saw
15 out there that night?

16 A. Yes.

17 MR. POWELL: Nothing further,
18 Judge.

19 CROSS-EXAMINATION

20 BY MR. HARTLEY:

21 Q. Mr. Osborne, y'all got out
22 there about what time that night?

23 A. It was -- it was late. I can't
24 recall. The party was over with. I
25 ain't --

1 Q. I want to find out had you been
2 drinking before you arrived at the scene
3 there that night?

4 A. No. We just had left my mama's
5 house. I just had put on clothes.

6 Q. So you are going to a birthday
7 party that takes place over there in that
8 neighborhood and you don't go until 11:30
9 at night?

10 A. Well, we had to take his
11 girlfriend to work and then we had to go
12 to the party. But see we -- when they
13 throw parties out there, they throw
14 parties till in the morning time, you
15 know what I'm saying.

16 Q. Things get kind of wild out
17 there, don't they?

18 A. Yeah.

19 Q. Let me show you some of these
20 exhibits. You looked at that picture
21 over there and tried to refer to things
22 that happened out there that night. It
23 wasn't lit up like that that night, was
24 it?

25 A. No.

1 Q. These are some photographs that
2 were taken by police officers -- by the
3 officer that came out there and
4 photographed the scene. His pictures
5 portray it to be fairly dark out there.

6 Is there any lighting that
7 lights up that area behind the cars and
8 between the buildings? Was there any
9 lighting out there that night?

10 A. No.

11 Q. So whatever you saw was in the
12 dark shadows of those buildings, wasn't
13 it?

14 A. Yeah. But you could still see
15 the person's face good though.

16 Q. Well, if your brother testified
17 that the persons that he saw back in
18 there, standing back there near the
19 buildings were in the shadow from the
20 street light, it made it even darker.
21 Would you agree with that or disagree
22 with that?

23 A. I can't say because my brother
24 couldn't really see from the driver's
25 side.

1 Q. Excuse me?

2 A. My brother couldn't see from
3 the driver's side so I couldn't really
4 say.

5 Q. If he said he saw the people
6 that were back there but said he couldn't
7 identify them, then it would be up to him
8 to say whether or not he could see or
9 not, right?

10 A. Yeah.

11 Q. How many people did you see
12 back there at that time?

13 A. Three.

14 Q. Three?

15 A. Yeah.

16 Q. Well, what if your brother said
17 he saw five?

18 A. I didn't see but three. I seen
19 three guys I know.

20 Q. So your brother and you who
21 were almost in exactly the same spot at
22 exactly the time observed totally
23 different numbers of people back there,
24 right?

25 A. Yeah.

1 Q. Wait. You said the lighting
2 was good back there, right?

3 A. When I got back, there were
4 three folks. There were three folks out
5 there.

6 Q. And at the moment that the
7 shooting went on --

8 A. There was three folks.

9 Q. You said there were three folks
10 and your brother says there were five?

11 A. I didn't see but three.

12 Q. Okay. Is that because the
13 lighting was not as good as you are
14 trying to portray it to be to this jury
15 today?

16 A. Well, from where I can see, I
17 know I can see what I can see, you know
18 what I'm saying? It really wasn't that
19 dark back there.

20 Q. Well, why do you think the
21 officer had such a hard time
22 photographing your vehicle when it comes
23 out that dark?

24 A. Well, I don't know.

25 Q. Do you see any lighting that

1 illuminates that area? That's supposed
2 to be the area in State's Exhibit Number
3 1 between the buildings. Do you see that
4 number 406 up there?

5 A. That's not in the parking lot
6 though.

7 Q. That's not?

8 A. I'm saying, he ain't at the
9 parking lot. He's taking pictures close
10 up.

11 Q. This is the same area where the
12 shooting took place, right?

13 A. Yeah. That's a closeup
14 picture.

15 Q. It wasn't lit up like that, was
16 it?

17 A. No.

18 Q. And that bad lighting and the
19 inability to see is why you and your
20 brother have totally different versions
21 of how many people were out there, right?

22 A. Yeah.

23 Q. Did you see Darryl Foggy out
24 there?

25 A. I don't even know Darryl Foggy.

1 Q. Is your brother acquainted with
2 Darryl Foggy?

3 A. I don't even know.

4 Q. Did you see Bryant Thomas out
5 there?

6 A. I don't even know him.

7 Q. Who did you know that was at
8 this party?

9 A. All I know is Boo and Eric and
10 I know my cousin Chris McQueen. I know
11 they were having the party.

12 Q. Well, now, I'm not clear. When
13 you first got there, did you say that
14 they came over and spoke to you at your
15 vehicle when you first got there or when
16 you returned from the store?

17 A. When I first got there.

18 Q. And they came over and spoke to
19 you?

20 A. Rabbit --

21 Q. How many people came over then?

22 A. Two.

23 Q. Just two people?

24 A. Two, Rabbit and Boo.

25 Q. And were they arguing?

1 A. Uh-huh (indicating no). They
2 were home boys.

3 Q. Wait a minute. But you don't
4 know Darryl Foggy, do you?

5 A. No, sir.

6 Q. Nicknamed D? You don't know
7 him?

8 A. (Witness nodding head
9 negatively.)

10 MR. HARTLEY: No further
11 questions.

12 REDIRECT EXAMINATION

13 BY MR. POWELL:

14 Q. Mr. Osborne, after you heard
15 those gunshots out there that night, did
16 anybody take off running?

17 A. Well, ain't nobody -- I ain't
18 seen nobody run but Poncho.

19 Q. Were there other people
20 standing around like on the porch and
21 that kind of thing that you were able to
22 see?

23 A. No. No, sir.

24 Q. You didn't see it or there
25 wasn't anybody standing there?

1 A. I didn't see it. I didn't pay
2 no attention to it. Because when he
3 started shooting at the truck, I was
4 telling my brother pull off.

5 Q. You were focused on where the
6 shots were coming from?

7 A. Where the bullets coming from,
8 you know what I'm saying.

9 Q. So if there were other people
10 standing around or took off running --

11 A. I don't even know about it.

12 Q. -- you wouldn't know that?

13 A. Uh-huh (indicating no).

14 Q. Now when the gun shot, did any
15 fire come out of it?

16 A. Well, you -- a little.

17 Q. A little?

18 A. You can't say much. Just a
19 little fire came out.

20 Q. But you were able to see that?

21 A. Yeah.

22 MR. POWELL: Nothing further,
23 Judge.

24 MR. HARTLEY: Nothing further.

25 THE COURT: Okay.

1 MR. HARTLEY: One more.

2 BY MR. HARTLEY:

3 Q. Let me refer to your
4 statement. This is page eleven. You
5 gave a statement to the police, Detective
6 Townsend, on the day after the event.

7 A. Yes.

8 Q. It starts off, is your name
9 Brian Osborne?

10 A. Yes.

11 Q. Does that appear to be a
12 transcript of your statement? Did you
13 say that?

14 A. Yes.

15 Q. On page eleven, you said so
16 -- you are describing -- after the
17 officer asked you questions about what
18 happened, then you said -- you heard
19 about five shots.

20 MR. HARTLEY: This is the --
21 the fourth question down, Counsel.

22 Q. So, you know -- I'm going to
23 read this for him if counsel does not
24 object. You know what I'm saying, we
25 looked up and when I seen the dude Poncho

1 running behind the building, my brother
2 pulled off.

3 Why would you have to say you
4 looked up if you'd been looking out the
5 window and had your head turned around
6 and looking back the whole time?

7 A. I ain't say that.

8 Q. You didn't say that?

9 A. They probably had it wrote
10 because we were talking too fast, you see
11 what I'm saying.

12 Q. You are saying that the police
13 typed --

14 A. I'm saying they typed up my
15 date of birth wrong, you see what I'm
16 saying.

17 Q. So you are saying in the
18 original statement you did not say I
19 looked up and then saw Poncho running
20 off?

21 A. I know I was paying attention.
22 I was looking all the time.

23 Q. I am asking, if they say in
24 that typed statement, so you know what
25 I'm saying, I looked up -- I mean, I

looked up when I seen the dude Poncho running behind the building. You are saying that that is not something you said?

A. Well, it's on paper. It's got to be.

Q. So now you are saying you did look up at some point. That implies that you ducked down and then looked back up, right?

A. I did not -- the whole time he was shooting, I seen it from my own eyes. From my own eyes, I seen this.

Q. Well, what does that mean when you say we looked up? We looked up. What does that mean?

A. Like I say, my brother, you know what I'm saying. Because it was me and my brother in the truck.

Q. Next question down. It says, between the third and fourth shot, did you duck down? And what did you answer?

A. Yes, sir.

Q. Okay. So they asked you if you ducked and you said yes, sir. Correct?

1 A. Yes. Wouldn't you duck if you
2 shot at three or four times.

3 Q. I'm just asking, were you
4 looking the whole time or were you not
5 looking the whole time?

6 A. I ducked after he shot at our
7 truck. But when he shooting Boo, I seen
8 that from my own eyes.

9 Q. Now you have changed your
10 testimony from where you were looking
11 back the whole time now to where you did
12 duck down at some point along the way,
13 right?

14 Because when you answered that
15 question, okay, all right. Did you duck
16 down, your answer was affirmative. What
17 does it say?

18 A. Yes, sir.

19 Q. Okay. Now do you admit that
20 you said that to the police officer?

21 A. It's on paper. It got to be.

22 Q. So you in fact did duck down
23 during part of that event, didn't you?
24 Did you?

25 A. After he shot at our truck.

1 Q. Okay. So you weren't looking
2 back the whole time?

3 A. Because glass and stuff was
4 still flying.

5 Q. You were looking back at that
6 area that was dark behind your vehicle?

7 A. Yeah.

8 MR. HARTLEY: Okay. No further
9 questions.

10 REDIRECT EXAMINATION

11 BY MR. POWELL:

12 Q. I think Mr. Hartley may have
13 skipped over one question, Mr. Osborne.
14 Now the part he was referring to where he
15 was talking about, I'm saying we looked
16 up. That's right here, is it not?

17 A. Yes.

18 Q. The very next question, what is
19 that?

20 A. Yes, sir.

21 Q. Does it say, did you actually
22 see Poncho pull the trigger? Is that the
23 question?

24 A. Yes, sir.

25 Q. And the answer is yes, sir, I

1 saw the fire?

2 A. Yes, sir.

3 Q. That's what it says?

4 A. Yes.

5 Q. That was actually the next
6 question?

7 A. Yeah, before that.

8 Q. And then he asked you, so where
9 was Boo? And your answer was Boo had --
10 Boo was right there. He had fell on the
11 ground by then. By that time he had
12 fell; is that right?

13 A. Yes, sir.

14 Q. And then he starts asking you
15 that's when the vehicle got shot and
16 that's when you ducked?

17 A. Yes.

18 Q. Okay.

19 MR. POWELL: Nothing further,
20 judge.

21 THE COURT: You want to ask one
22 more question again, Mr. Hartley?

23 MR. HARTLEY: No.

24 (Off-the-Record Discussion.)

25 THE COURT: You can step down.

1 Thank you, sir. Ladies and gentlemen, we
2 are going to break for the day. I
3 appreciate your patience. We are going
4 to start back at 9:00 in the morning
5 unless somebody tells me -- if that
6 creates a problem for you. Is that okay
7 for everybody?

8 I think -- hopefully we can
9 finish the evidence before lunch anyway.
10 Maybe even get the law to you and all
11 that. We can -- y'all can start
12 deliberating tomorrow afternoon.

13 In the meantime, remember don't
14 let anybody discuss the case with you.
15 Don't discuss the case with each other.
16 Don't try to do an independent
17 investigation of the facts in this case.
18 Don't get on the internet. I can promise
19 you the first thing that is going to
20 happen when you go home tonight is your
21 wife or your husband or your children,
22 somebody is going to say tell me about
23 the case. Don't start talking about it
24 with them. Don't tell them anything
25 because they are going -- as soon as you

1 start telling them about the case, they
2 are going to throw their two cents in.
3 They are going to throw two cents in and
4 they don't know anything about case.
5 They hadn't heard word one. It just
6 takes us in an area where we don't want
7 to go.

8 I hadn't seen anybody from the
9 newspaper or anything in here today but
10 you never know. Something could be
11 reported on the news or something about
12 it. Just don't read anything about the
13 case. Don't listen to anything on the
14 news. I have yet to read a news account
15 of a case where they got it right. There
16 is always something in there that they
17 don't quite get. And since they are not
18 even here, anything they write is going
19 to be what somebody told them. It just
20 gets all messed up. So if you see an
21 article in the newspaper or you watch the
22 news and they start talking about
23 something that went on at the courthouse
24 just cover your ears. Just please don't
25 listen to them. It just causes more

1 problems than it is worth.

2 Good night. Thank y'all
3 again. If y'all would be back at the
4 jury assembly room at 9:00 in the jury
5 assembly room, we'll come get you. We
6 will start first thing in the morning.

7 (The jury exits the courtroom.)

8 (COURT ADJOURNED.)

June 22, 2003

THE COURT: Good morning. Glad to have you back. The reason we started at nine is in case you didn't know, we had some other matters to attend to this morning. We have gotten those out of the way and we are ready to get started. Mr. Powell.

MR. POWELL: The State calls
Detective Gino Howton.

E. E. HOWTON,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. POWELL:

Q. Detective, could you state your name for the members of the jury?

A. Corporal E.E. Howton.

Q. And how are you employed?

A. I'm a homicide detective for the
Montgomery Police Department.

Q. How long have you been a homicide detective?

A. About six-and-a-half years.

Q. How long have you been a

1 Q. And what about specifically any
2 training or specialized class work you have
3 done as a robbery homicide detective?

4 A. Been through investigation
5 classes. I have been to interrogation
6 classes. You know, interview classes,
7 stuff like that.

8 Q. Now, Detective, you are what is
9 referred to as a case agent in this case;
10 is that right?

11 A. Yes, sir.

12 Q. Describe for the jurors what that
13 means.

14 A. I am responsible for basically
15 putting the case together in whatever the
16 situation is and I am responsible for
17 collecting, gathering evidence from not
18 only information that I have obtained but
19 from other sources and end up putting it in
20 a case file such as this.

21 Q. So basically you are the primary
22 or lead detective on this case?

23 A. Yes.

24 Q. Are you the main detective
25 involved in investigating the circumstances

1 of this case?

2 A. After I was called in, yes, I
3 was.

4 Q. So basically all the documents
5 and everything related to this case come to
6 you?

7 A. Yes.

8 Q. Now, Detective, when were you
9 first called in on this case?

10 A. Saturday morning about 3:30 in
11 the morning.

12 Q. What happened?

13 A. I was contacted at my house by my
14 lieutenant. He told me that there had been
15 a shooting out at Smiley Court and one of
16 the subjects -- the subject that had been
17 shot died and he needed me to respond to
18 headquarters at that time.

19 Q. At that point did this become
20 your case?

21 A. After I got to headquarters it
22 was, yes.

23 Q. What did you do to follow up and
24 begin investigating this incident?

25 A. Well, I started getting

1 information from the late car detectives as
2 to basically what the situation was out in
3 Smiley Court when they got there. The
4 individuals that were involved and
5 potential witnesses that had already been
6 interviewed, getting their names,
7 addresses, so forth.

8 Q. Did you ever go back and
9 reinterview any of those witnesses?

10 A. Yes, I did.

11 Q. Now from your initial processing
12 of this information, talking to these
13 witnesses, did you develop any suspects?

14 A. I was initially given the name of
15 a subject at headquarters by the name of
16 Darryl Joyce or Darryl Joiner. That's what
17 was originally given to me.

18 Q. Okay. Now, did you talk to any
19 other witnesses -- did you talk to any
20 other witnesses as you continued following
21 up on this information?

22 A. Yes. I spoke to a black female
23 that was out there. I spoke to Eric
24 Stewart.

25 Q. That would be Rabbit who we have

1 already heard from?

2 A. Yes.

3 Q. Do you know the name of the black
4 female you spoke with?

5 A. Ms. Judkins.

6 Q. Whose residence was the party at?

7 A. Ms. Judkins.

8 Q. So you spoke to the lady that was
9 having the party?

10 A. Right.

11 Q. From that conversation, did you
12 develop any other possible names or
13 possible suspects?

14 A. Well, there was another subject
15 that was named Darryl as well.

16 Q. So we got two Darryls at the
17 party?

18 A. We had two Darryls at the party.
19 One was the original suspect that was given
20 to me, the other subject was known as D.,
21 Darryl Foggy.

22 Q. Darryl Foggy?

23 A. Yes.

24 Q. So let me make sure I'm clear.
25 We got one Darryl which is Darryl Joyce?

1 A. Right.

2 Q. Is this that Darryl Joyce?

3 A. Yes.

4 Q. The one in the courtroom today?

5 A. Yes.

6 Q. And the other Darryl is Darryl
7 Foggy?

8 A. Yes.

9 Q. And those were basically the two
10 Darryls you had at that party?

11 A. Yes.

12 Q. How did you follow up with those
13 two names to determine which one was your
14 suspect?

15 A. Well, like I said, I
16 reinterviewed Eric Stewart, Rabbit. Of
17 course, he was adamant that Darryl Foggy
18 was not involved in the shooting. He was
19 at the party but he was not involved in the
20 actual shooting of Mr. Friendly.

21 Q. Okay.

22 A. He later gave me the location of
23 where a handgun which belonged to Darryl
24 Foggy could be located where I eventually,
25 myself and another detective, went to a

1 residence across the street from Ms.
2 Judkins where we collected a nine
3 millimeter.

4 Q. I'm going to show you State's
5 21. Do you recognize this?

6 A. Yes, sir. This is the firearm
7 handgun which we recovered from Amy
8 Albright's apartment.

9 Q. And Amy Albright lived where in
10 relation to this incident?

11 A. Just right across the street.

12 Q. And the information you had that
13 led you to this handgun in Amy Albright's
14 apartment came from who?

15 A. Eric Stewart.

16 Q. And you were able to collect this
17 gun?

18 A. Yes.

19 Q. Once you had it in your custody,
20 what did you do with it?

21 A. It was sent to DFS.

22 Q. What does that mean?

23 A. It was sent to the Department of
24 Forensic Sciences to have it examined to
25 see if the round came -- that was recovered

1 from the victim came from that gun.

2 Q. Were you aware of any projectiles
3 that were recovered from the victim?

4 A. We were aware that three shell
5 casings were recovered from the area.

6 Q. From the crime scene?

7 A. Yes.

8 Q. And what about an actual bullet
9 that came out of the victim from an
10 autopsy?

11 A. We recovered one round from the
12 victim.

13 Q. I'm going to show you what we
14 have marked collectively as State's 15, 16
15 and 17, and ask you if you recognize these?

16 A. These are the shell casings which
17 were recovered from the crime scene.

18 Q. Do those appear to be in the same
19 -- do those casings appear to be in the
20 same or substantially the same condition as
21 the last time you saw them or had them in
22 your custody?

23 A. Yes.

24 MR. POWELL: We offer State's 15,
25 16 and 17.

MR. HARTLEY: Judge, I don't think the chain of custody has been fully established.

MR. POWELL: We'll wait on admissability, Judge.

THE COURT: I will let them in.

(State's Exhibit Numbers 15, 16
and 17 admitted into evidence.)

Q. Now, Detective Howton, do you know who collected these shell casings from the scene?

A. Detective Grandison.

Q. And do you know what Detective Grandison did with these shell casings?

A. Impounded them.

Q. And then once they -- when you say they were impounded, explain to the jurors what that means.

A. He took them and eventually placed them into the supply and evidence room down at headquarters, which eventually the casings were submitted to DFS through the crime scene bureau tech.

Q. How does that work? How did the
crime scene bureau tech get the shell

1 casings from y'all's evidence room over to
2 the DFS?

3 A. We fill out a request form, and
4 once that request form is filled out we
5 give them a copy of it and they receive
6 that copy. Then in turn they go back to
7 the supply and evidence room and retrieve
8 the shell casings at which time then they
9 transport it out to DFS and we release it
10 to them.

11 Q. To your knowledge, was anybody
12 else in your chain of custody besides
13 Detective Grandison, the evidence tech in
14 this case that transported the bullets, the
15 DFS person that tested the bullets or
16 yourself who received them back from DFS?

17 A. I'm not aware of anybody else,
18 no.

19 Q. Now, Detective, so basically what
20 you had from physical evidence of the scene
21 was a bullet from the victim's body, these
22 three shell casings, and State's 21, which
23 is a handgun purported to be from Darryl
24 Foggy; is that correct?

25 A. That's correct.

1 Q. Did you ever find Darryl Foggy?

2 A. Yes.

3 Q. Were you able to take a statement
4 from Darryl Foggy?

5 A. Yes.

6 Q. And after you had got the results
7 back from that handgun and talked to Darryl
8 Foggy, who did you sign warrants on?

9 A. Mr. Joyce.

10 Q. Was there any other evidence
11 implicating Darryl Joyce in this incident
12 other than Eric Stewart's testimony?

13 A. Well, the fact -- I couldn't find
14 him.

15 Q. You couldn't find him?

16 A. I couldn't find him, no.

17 Q. Were you ever able to recover a
18 gun or any type of firearm from Mr. Joyce
19 or his residence or anything associated
20 with him?

21 A. No.

22 Q. Were there any other witnesses
23 that identified Mr. Joyce as being the
24 shooter?

25 A. You had Eric Stewart. You had

1 Brian Osborne.

2 Q. Now, Detective --

3 A. And I believe you had Mr. Foggy.

4 Q. Do you know when you arrested
5 Darryl Joyce?

6 A. It was approximately -- it was on
7 February the 11th when he was actually
8 arrested out in California.

9 Q. What do you mean he was arrested
10 in California?

11 A. He was stopped in a traffic stop
12 by some officers out in Los Angeles or in
13 that area where he used a fake name and had
14 a fake ID, and they charged him with that.

15 Q. How were you able to identify the
16 person in California as your suspect Darryl
17 Joyce?

18 A. He used the name of Willie Faulk,
19 and that is his mother's maiden name. We
20 had a lookout on him at that time, which
21 was NCI. We had a nationwide lookout on
22 him. We ended up sending a certified copy
23 of some fingerprints of Mr. Joyce out to
24 LA, and in turn they sent a photograph back
25 to us. They were able to verify the

1 fingerprints that belonged to Darryl Joyce
2 at that time.

3 Q. Did you take a look at the
4 photographs?

5 A. Yes.

6 Q. Were you able to verify the
7 photographs?

8 A. I just -- just that one
9 photograph they sent to me. I told them
10 that he had a habit of bending his lip
11 whenever a photograph was taken of him to
12 kind of distort the photograph. When I got
13 the photograph back from LA, that's what I
14 had was a photograph of him, which I
15 identified, and him biting his upper lip.

16 Q. When did this incident occur,
17 Detective Howton, the shooting?

18 A. Actually, on the 1st of February
19 of 2002.

20 Q. And when was the next time any
21 law enforcement had contact with this
22 defendant?

23 A. When he was arrested out in Los
24 Angeles. That was on the 11th.

25 Q. The 11th, ten days later?

1 A. Yes.

2 Q. He was all the way in Los
3 Angeles, California?

4 A. Yes.

5 Q. Now, Detective, I want to show
6 you what I have marked for identification
7 purposes only as State's 28. Explain to
8 the jurors what State's 28 is.

9 A. This is a mug book that we have.

10 Q. What does that mean?

11 A. Well, it has got -- it contains
12 photographs of --

13 THE COURT: Can you speak up,
14 Detective. I don't think everyone can hear
15 you.

16 A. This is a mug book. It has a --
17 or has photographs of several individuals
18 which have been arrested over a period of
19 time, and they are collected in this book.

20 MR. HARTLEY: Judge, I object and
21 move for a mistrial. The evidence
22 -- whatever the history of all these
23 people in this book should not be
24 introduced in this trial, Judge.

25 (An off-the-record discussion was

1 held outside the presence and hearing of
2 the jury and the court reporter.)

3 THE COURT: You have your
4 objection. Ladies and gentlemen of the
5 jury, the fact that the police department
6 has a photograph of Mr. Joyce is not to be
7 considered by you any implication that he
8 is guilty or innocent in this case. It is
9 not evidence of guilt, the fact that they
10 had a photograph of Mr. Joyce.

11 They have got lots of photographs
12 and that's not to be considered by you.
13 Does everybody understand that? Does
14 anybody have a problem with treating that
15 as not being an indication of his guilt?
16 Okay.

17 Q. You were talking about the book
18 with a bunch of photographs in it?

19 A. Yes.

20 Q. Now, is the defendant's picture
21 in that book?

22 A. Yes.

23 Q. Could you open the book to the
24 page with the defendant's picture on it?

25 A. (Witness complies.)

1 Q. Is this the page with the
2 defendant's picture on it?

3 A. Yes.

4 Q. Did you use this book at any
5 point during the course of your
6 investigation?

7 A. Yes.

8 Q. Explain to the jurors how you
9 used this book.

10 A. Just presented the book to some
11 of the witnesses and let them see if they
12 could identify Mr. Joyce.

13 Q. Was Eric Stewart one of those
14 witnesses?

15 A. Yes.

16 Q. Was he able to identify the
17 defendant?

18 A. Yes.

19 Q. Did you show this book to either
20 one of the Osbornes?

21 A. Not me, but I believe one of the
22 other detectives did.

23 Q. And could you point out to the
24 jurors which one of the pictures on these
25 two pages is Mr. Joyce?

1 A. The top one right here.

2 Q. And is that the same picture or
3 different picture from the one Eric Stewart
4 identified?

5 A. I believe that's the same picture
6 it came from out of the book.

7 Q. The same picture. And Eric
8 Stewart used this book to positively
9 identify the defendant Darryl Joyce?

10 A. Yes.

11 Q. Now, Detective, did you ever go
12 out to this crime scene?

13 A. Yes.

14 Q. So you are familiar with the
15 layout and the evidence where it was
16 collected?

17 A. I know the general area, yes,
18 sir.

19 Q. The general area?

20 A. Yes, sir.

21 Q. I'm going to show you a series of
22 photographs and ask you to take a look at
23 these real quick. First, let's start with
24 -- here it is right here. Let's start
25 with State's 27 and 27-A. I believe

1 State's 27 and 27-A have been combined
2 together, put on the board there. Do you
3 recognize that?

4 A. Yes, sir.

5 Q. What is it?

6 A. It is a drawing that I did,
7 completed in reference to the crime scene
8 and the general area of the crime scene.

9 Q. To your knowledge, this is not to
10 scale?

11 A. No, it's not to scale.

12 Q. With that exception, does this
13 fairly and accurately represent the way the
14 crime scene looked on the night of the
15 shooting?

16 A. Yes.

17 MR. POWELL: We offer 27 and
18 27-A, Judge.

19 THE COURT: It is admitted.

20 (State's Exhibit Numbers 27 and
21 27-A admitted into evidence.)

22 Q. Detective Howton, I have got a
23 series of photographs here, State's 1, and
24 some of these other ones have already been
25 admitted. State's 1 through 6. Do you

1 recognize those?

2 A. It is photos of the crime scene.

3 Q. Are you familiar with those?

4 A. Yes.

5 Q. I want you to go ahead and take a
6 look for me at State's 7 through 14.

7 A. (Witness complies.)

8 Q. Just look through real quick and
9 tell me if you recognize those.

10 A. It is a photograph of the crime
11 scene of that area. This is during
12 daylight hours though.

13 Q. It is a different photograph of
14 the crime scene?

15 A. Yes.

16 Q. Do these appear to be fair and
17 accurate representations --

18 MR. HARTLEY: Your Honor, I
19 object. I don't believe Mr. Howton was out
20 there. No testimony has been brought forth
21 as to when he was out there or what
22 occasions he was out there and what time he
23 was out there. So I'm not sure how Mr.
24 Powell can ask him if they fairly and
25 accurately depict the scene if he wasn't

1 out there the night that the scene was
2 investigated.

3 THE COURT: When was he out
4 there?

5 Q. Detective, when did you actually
6 go to the crime scene to look at these two
7 apartment buildings?

8 A. I was out there that Saturday
9 morning around 5:30 in the morning.

10 Q. Did you ever go back out there
11 subsequently?

12 A. Well, that was the first time I
13 went out there was that Saturday morning
14 around 5:30.

15 Q. And have you ever been over to
16 the area of Marlyn Street in Smiley Court
17 before?

18 A. Oh, yes, many times.

19 Q. How many times have you been out
20 there to that area in general?

21 A. Several.

22 Q. Are you familiar with the basic
23 setup of the apartment buildings and the
24 areas that are located on Smiley Court?

25 A. Yes, sir.

1 Q. And from your knowledge, based
2 both specifically on this case and from
3 your knowledge of the neighborhood in
4 general, do these pictures appear to be
5 fair and accurate representations of the
6 areas surrounding the 4000 block of Marlyn
7 Street?

8 A. Yes, sir.

9 MR. POWELL: We offer these
10 photographs.

11 THE COURT: Admitted.

12 (State's Exhibit Numbers 7
13 through 14 admitted into evidence.)

14 Q. Now, Detective, we prepared a
15 Powerpoint demonstration, a monitoring aid
16 to assist you in your testimony.

17 Would that assist you in
18 explaining the locations of several items
19 of physical evidence to the jury?

20 A. Yes, sir.

21 Q. What are we looking at on the
22 screen?

23 A. That's the drawing that I
24 completed and the legend that went with it.

25 Q. Does the photograph that just

appeared on the screen, I believe it is marked State's 1, what is that a photograph of?

A. That's going to be a photograph of the area in between the two buildings where the shooting occurred.

Q. And the arrow, what does that indicate?

A. That's the general area where the shooting occurred.

Q. Now the next photograph that came up, I believe it is State's 6. What is that a photograph of?

A. That's the same area except it's a photograph in daylight.

Q. Now that's a closeup. To the best of your knowledge, is this where the shooting occurred?

A. Yes, sir.

Q. And this is a different photograph?

A. Yes, sir.

Q. What does that circle indicate?

A. That's where the victim and the shell casings were located.

1 Q. Now, the three photographs that
2 just appeared, what are those?

3 A. Those are the shell casings which
4 were located at the scene.

5 Q. And the circles that just
6 appeared, what do they indicate?

7 A. The shell casings.

8 Q. And those casings that are
9 circled in those photographs, are those the
10 same casings that we have admitted into
11 evidence as State's 15, 16 and 17?

12 A. Yes, sir.

13 Q. What is this a photograph of?

14 A. That is going to be the vehicle
15 that the Osbornes were in.

16 Q. And, again, what is this a
17 photograph of?

18 A. That's an overall of the crime
19 scene area.

20 Q. Do you know which apartment
21 building the party was being held in?

22 A. It's going to be on the lower
23 right --

24 Q. You can press that button and
25 indicate it there.

1 A. Okay. All right. The party was
2 held right there.

3 Q. Now, what is this a photograph
4 of?

5 A. That's the overall view of the
6 crime scene.

7 Q. And that one?

8 A. Same thing.

9 Q. Now this, what are we looking at
10 here?

11 A. That's the building where the
12 party was being held at.

13 Q. And what is this?

14 A. That's the actual apartment right
15 here.

16 Q. And what -- that area there, does
17 that indicate the porch some people have
18 been referring to?

19 A. Yes, sir.

20 Q. And another photograph?

21 A. Yes, sir.

22 Q. What is this a photograph from?

23 A. That's going to be the back side
24 of the buildings.

25 Q. The reverse angle?

1 A. Right.

2 MR. POWELL: I don't think I have
3 anything further of this witness, Judge.

4 THE COURT: Mr. Hartley.

5 CROSS-EXAMINATION

6 BY MR. HARTLEY:

7 Q. Detective Howton, do you have any
8 of the supplemental offense reports that
9 you prepared as case agent of this case, do
10 you have any of those with you?

11 A. I've got several right here in
12 the case file.

13 Q. You do have them so you can refer
14 to them if I ask you to refer to them,
15 right?

16 A. Yes.

17 Q. When you began your testimony,
18 Mr. Powell asked you about some of the
19 steps you took in conducting your
20 investigation and you did say that you
21 talked to a Nicole Judkins; is that right?

22 A. Yes, sir.

23 Q. And you talked to Darryl Foggy, I
24 believe?

25 A. Yes, sir.

1 Q. But you talked to several other
2 people beyond that, didn't you?

3 A. Yes, sir.

4 Q. Did you speak to a Bryant Thomas?

5 A. Yes, sir.

6 Q. All right. And, of course, you
7 took -- did you take statements from Eric
8 Stewart?

9 A. Yes, sir.

10 Q. One of them or both of them?

11 A. I took one of them, yes.

12 Q. And was it -- were you the person
13 that Eric Stewart divulged the information
14 about the location of Darryl Foggy's gun?

15 A. Yes, sir, he was.

16 Q. Now, could you refer to your
17 supplemental offense report that was
18 prepared on February the 5th, '02. I know
19 there are more than one in the file. So I
20 will try to give you a reference point
21 here. It is called a follow-up
22 investigation. The first line of this --
23 I'm sorry. Let me give you -- it is a
24 fourteen page long report. So you notice
25 it is one of the more lengthy ones. It

1 starts off on Saturday, February 2nd, '02.

2 Can you find that one?

3 A. Can you tell me what date the
4 supplement was done?

5 Q. On February the 5th, '02, at 840
6 hours. It is a fourteen page report.

7 A. Fourteen page?

8 Q. Let me show you the first page of
9 it.

10 A. I've got it right here.

11 Q. That's the one.

12 A. Okay.

13 Q. And this is something that you
14 prepared in the course of our
15 investigation; is that right?

16 A. Yes, sir.

17 Q. And it memorializes a lot of
18 things that happened, right?

19 A. Yes.

20 Q. I want you to refer, if you will
21 -- let me be sure I get to the right
22 place.

23 MR. HARTLEY: I'm sorry, Judge.
24 I've got so many pages.

25 Q. Yes. On page nine, if you will.

1 In the first paragraph of that part of the
2 report -- well, on the previous page and
3 the top paragraph on page nine, I think
4 that's where you are writing your notes
5 that you made that recorded Eric Stewart's
6 disclosing where the gun was that was
7 Darryl Foggy's gun; is that right?

8 A. Yes, sir.

9 Q. And at the end of that paragraph
0 you wrote the following, and I want you to
1 explain it to the Court. The sentence is
2 written: At this time it is unknown as to
3 reason why Eric Stewart took Foggy's gun
4 and hid the gun. I think there is a typo
5 there. It is A-N but it is probably and
6 hid the gun, end of sentence.

7 At that time, did you have some
8 information that would have led you to
9 write in this report that Eric Stewart had
20 hidden Foggy's gun, Darryl Foggy's gun?

21 A. No, but at that time I was having
22 some doubt as to which Darryl was actually
23 involved.

24 Q. But that's not the same
25 question. The question is: Your report

1 says, at this time it is unknown as the
2 reason why Eric Stewart took Foggy's gun
3 and hid the gun. I mean, you didn't just
4 write that as a casual matter of no
5 importance, did you?

6 A. I didn't know. I don't know why
7 he took the gun. That's why I --

8 Q. But something made you put it in
9 your report that there was an open question
10 as to why Eric Stewart hid Darryl Foggy's
11 gun, right?

12 A. Correct.

13 Q. And did you in fact get some
14 information from a lady named Ms. Works?

15 A. Yes.

16 Q. It is down at the bottom of that
17 same page, isn't it?

18 A. Yes.

19 Q. And what did she tell you about
20 Darryl Foggy's gun?

21 MR. POWELL: Your Honor, we are
22 going to object to hearsay.

23 MR. HARTLEY: Your Honor, it is
24 written in his report.

25 MR. POWELL: It is still hearsay.

1 THE COURT: It is still hearsay.

2 Q. Well, I won't ask you what she
3 said. Did you record in your report
4 information from Ms. Works that also
5 referenced the fact that Eric Stewart had
6 hid Darryl Foggy's gun?

7 MR. POWELL: Your Honor, we are
8 going to object to the double hearsay.

9 MR. HARTLEY: That's not
10 hearsay. That's what he wrote in his
11 report, Judge.

12 MR. POWELL: It makes it hearsay.

13 THE COURT: It is still hearsay.

14 Q. So you can't tell us why you
15 wrote in the report after having talked
16 with all these people something about Eric
17 Stewart having hidden Darryl Foggy's gun?

18 A. Repeat that one more time.

19 Q. I'm going back to my question a
20 moment ago. Did you write in the report
21 that you had an -- an open question or --
22 it was unknown to you why Eric Stewart had
23 taken and hidden Darryl Foggy's gun?

24 A. That's right. I didn't know why.

25 Q. But you wrote that in there for

1 some reason, right?

2 A. I was questioning it, yes.

3 Q. Let me ask you about your
4 interview or your statement or your -- I
5 don't think you took a statement from
6 Bryant Thomas. Who was Bryant Thomas?

7 A. Bryant Thomas is the subject that
8 walked over there with James Friendly, over
9 to the party that night.

10 Q. And I guess on the next day, on
11 Saturday, were you interviewing him about
12 the -- his knowledge of this case?

13 A. Did I speak to him on Saturday?

14 Q. Let me refer you to page eight of
15 the report.

16 A. Page eight.

17 Q. The same report.

18 A. I did speak to him on Saturday.

19 Q. Did you ask him if he knew who
20 had committed the offense?

21 MR. POWELL: Your Honor, at this
22 point it may be a little premature but we
23 are going to object to the substance of
24 anything that Bryant Thomas told the
25 detective as that would be hearsay if it

1 doesn't come from Bryant Thomas himself.

2 MR. HARTLEY: We've got Bryan
3 Thomas to testify if we need to, Judge. I
4 will just ask him about this exhibit.
5 We've got an exhibit that came from his
6 file. We can ask him about that.

7 MR. POWELL: True.

8 MR. HARTLEY: Okay.

9 Q. Without telling me, you know,
10 words that Bryan Thomas said, did you go
11 through a process with Bryan Thomas to
12 possibly narrow down or specifically
13 identify a suspect who committed this
14 offense?

15 A. Yes.

16 Q. Did you show him one of these
17 photo arrays that we have heard testimony
18 about in this case earlier?

19 A. Yes.

20 Q. Now this photo array -- you can
21 see what I have in my hand here, can't you,
22 from a distance? What kind of photo array
23 is this? It is not the same as this book
24 over here, is it?

25 A. That's more or less a photo

1 lineup.

2 Q. Right. Is this designed so that
3 a person might be able to pick somebody out
4 of a group and say this is a person who
5 committed the offense?

6 A. Yes.

7 Q. All right. And did you go
8 through that process with Mr. Bryan Thomas?

9 A. Yes.

10 MR. HARTLEY: Now, this has not
11 been admitted or offered yet, I don't
12 believe.

13 MR. POWELL: Not yet.

14 Q. It bears a sticker called State's
15 Exhibit 26. I'm going to show it to you
16 now. See if you can identify that for the
17 Record and for the jury and tell us what
18 you know about that lineup?

19 A. This is a lineup that is signed
20 by Bryant Thomas and he is identifying
21 photograph number three in this lineup.

22 Q. All right. Now, he -- I want you
23 to be specific because when you asked him
24 to identify this, you identify someone from
25 that photo, were you asking him to identify

1 persons who were present or the person who
2 committed the offense against James
3 Friendly?

4 A. Usually when I show a lineup like
5 this, it is to see who he knows that pulled
6 the trigger, if we can identify the
7 suspect.

8 Q. And did you record in your report
9 that Bryan Thomas had positively identified
10 number three, the photograph of number
11 three, as being the person who he claimed
12 was the subject that was involved in the
13 shooting of James Friendly?

14 A. Yes, sir.

15 Q. Who is the subject -- who is the
16 picture in number three?

17 A. Darryl Foggy.

18 Q. Would you hold that up and just
19 show it to the jury and point to Darryl
20 Foggy's picture?

21 A. Number three right here.

22 Q. So this is a person who was
23 identified by an eye witness as being the
24 shooter on the morning of --

25 MR. POWELL: Judge, we object to

1 the fact that it is not in evidence as
2 Bryan Thomas being an eye witness.

3 THE COURT: Overruled.

4 Q. Did he tell you that he saw what
5 happened out there?

6 MR. POWELL: Objection, Your
7 Honor. Hearsay.

8 MR. HARTLEY: Okay. Strike
9 that. We are not going into any possible
10 hearsay.

11 Q. But you went through this process
12 and he said -- that is the result of --
13 that identification is the result of your
14 interview with Mr. Bryan Thomas, right?

15 A. Yes, sir.

16 Q. Okay. And you reported in your
17 report that he positively identified him as
18 the shooter?

19 A. Yes.

20 Q. Thank you. Further on in your
21 report, if I can find it. Let me go back.
22 Did you talk to Nicole Judkins? I believe
23 you identified her as one of the people you
24 interviewed?

25 A. Yes.

1 Q. In your interview with her, did
2 she identify Darryl Foggy as being one of
3 the people that was at the party?

4 A. Yes.

5 Q. Did she say that she knew he had
6 a gun?

7 MR. POWELL: Objection, Your
8 Honor. The question calls for hearsay.

9 Q. Have you recorded in your report
10 that she knew about a gun being at the
11 party?

12 MR. POWELL: Objection, Your
13 Honor. That question calls for double
14 hearsay, what someone said and whether it
15 was put in a written document.

16 MR. HARTLEY: Your Honor, she is
17 a witness in the case and will testify
18 later. If we have to recall this witness,
19 we will do it.

20 MR. POWELL: She can testify to
21 it but as to --

22 THE COURT: I will sustain the
23 objection.

24 Q. Did Nicole Judkins have
25 information about this case?

1 A. Yes.

2 Q. Did she have knowledge of the gun
3 that is sitting on that counter right
4 there, on the table?

5 A. She had knowledge of a gun, yes.

6 Q. Who did -- okay. And whose gun
7 is this supposed to be?

8 A. Mr. Foggy's.

9 Q. Now let's go back.

10 MR. HARTLEY: And if counsel
11 would assist me, I would like to ask you to
12 put up the screen that shows the schematic
13 of the property.

14 MR. POWELL: The whole thing?

15 MR. HARTLEY: The aerial, that's
16 it.

17 Q. You testified about the State's
18 Exhibits 15, 16 and 17 being shell casings
19 recovered?

20 A. Is that the numbers for the shell
21 casings?

22 MS. PERKINS: Yes.

23 MR. POWELL: The shell casings.

24 A. Okay. Yes, sir.

25 Q. In all of your statements -- in

1 all the statements that were taken from
2 various witnesses, did anybody say that
3 there were just three shots fired?

4 A. I have had information -- well, I
5 got information, it was supposed to be
6 several other shots fired in this case.

7 Q. Did witnesses tell you that there
8 were as many as six shots fired or numbers
9 in that range?

10 A. I have had five and six shots. I
11 had eight or nine shots.

12 Q. But only three shell casings were
13 found out there, right?

14 A. Correct.

15 Q. And if this scene all happened
16 right here in this area and if it all
17 happened in a matter of seconds, is it --
18 by the way, do you have some familiarity
19 with guns?

20 A. Sir?

21 Q. You have some familiarity with
22 handguns?

23 A. Some, yes.

24 Q. I'm not trying to qualify you as
25 an expert but could you distinguish between

1 an automatic pistol and a revolver?

2 A. Yes.

3 Q. Does a revolver have a round --
4 I'm going to call it a cylinder, where it
5 holds all of the shells in there and as it
6 is fired does it kick out the empty shells?

7 A. No.

8 Q. Is that a revolver laying on that
9 table?

10 A. No.

11 Q. It is considered an automatic?

12 A. Semiautomatic, yes, sir.

13 Q. Semiautomatic. If the weapon
14 fired out there that night was kicking
15 shell casings out or throwing them on the
16 ground, what kind of gun would it most
17 likely be?

18 A. Semiautomatic or an automatic.

19 Q. Does the semiautomatic, when it
20 is being fired, does it stop kicking the
21 shells out, you know, along the way or does
22 it eject every single spent cartridge?

23 A. It ejects each casing as it is
24 fired.

25 Q. So wouldn't it be a logical

1 inference that if someone had shot out
2 there five or six times that there should
3 have been more shell casings on the ground?

4 A . Yes .

5 Q. And your officers are supposed to
6 be out there conducting a thorough search
7 to find all the evidence that they can find
8 out there, right?

9 A. Yes.

Q. And y'all have got plenty of manpower to go out there and scour the ground and find all the shell casings, right?

14 A. Yes.

15 Q. Would it be a reasonable
16 inference that someone probably picked up
17 some shell casings and made off with them
18 from that scene?

19 A. I think there would have been
20 some difficulty in doing that because of
21 the grass because we went back out there
22 and looked around. Of course, Grandison
23 was able to find those three casings but we
24 looked all over that area but we were
25 unable to find anymore shell casings.

1 Q. So something could have happened
2 to those casings, right?

3 A. Yes, but I think it would be a
4 great difficulty.

5 Q. But it's not impossible?

6 A. No. It is possible that they may
7 have found some, but I would question
8 whether they would have been able to find
9 all of them.

10 Q. My only point about this is, the
11 number of shell casings and the number of
12 shots fired don't match up, do they?

13 A. No, they don't.

14 Q. In the course of your
15 investigation, did you find out that there
16 may have been two people out there who had
17 the nickname Poncho?

18 A. No. Just one. I know the second
19 Poncho came up later on.

20 Q. So someone came to the scene
21 later?

22 A. No. I was -- I had to interview
23 or I spoke to a subject on Dellwood Court
24 that also went by the name of Poncho.

25 Q. Who was that person?

1 A. He has got a long name. I can't
2 think of his name. It is in the file.

3 Q. Did that person have a connection
4 to this matter?

5 A. No, did not.

6 Q. How did his name get into your
7 file?

8 A. Because his name -- his nickname
9 is also Poncho.

10 Q. Tell us who it is. I don't know
11 where that is in the file right now. I
12 have been trying to keep up with some of
13 these names, but if you could help me, I
14 sure would like to know who that is.

15 Mr. Powell has found it. He
16 tells me it is in your February 13 report,
17 page five.

18 A. Yeah. Here it is. Alwin
19 Darius. I will spell the middle name,
20 A-Q-U-A-N-T-I-S-E, Owens, O-W-E-N-S.

21 Q. And what connection, if any, did
22 he have? Was he at the scene?

23 A. I was never given his name at all
24 at the scene, no.

25 MR. HARTLEY: One moment, Judge.

1 Q. In your record, there is a
2 reference to Nicole Judkins, information
3 about a gun, right?

4 A. Yes.

5 Q. And does your report reflect the
6 color that she said the gun was?

7 A. Black.

8 Q. Okay.

9 MR. HARTLEY: No further
10 questions.

11 REDIRECT EXAMINATION

12 BY MR. POWELL:

13 Q. Detective, Mr. Hartley asked you
14 questions about is it possible the number
15 of shots fired and other shell casings. Is
16 it possible that in between those two
17 buildings there could have been an echo?

18 A. It is possible, yes.

19 Q. And it is also possible other
20 witnesses just didn't hear the number of
21 shots that were actually fired?

22 A. That's correct.

23 Q. Is that common when you are
24 investigating a shooting incidents to have
25 wild variations in the number of shots

1 people heard?

2 A. Yes.

3 Q. Now, let's talk about back to
4 this initial investigation. Now,
5 initially, you would agree with me, you
6 were in fact looking at two different
7 Darryls as possible suspects?

8 A. That's correct.

9 Q. And the fact that this Bryan
10 Thomas identified Darryl Foggy out of a
11 photo lineup was one of the things you were
12 using to develop Darryl Foggy as a possible
13 suspect?

14 A. Yes.

15 Q. At any point were you able to
16 exclude the other Darryl, Darryl Joyce, as
17 a possible suspect?

18 A. No.

19 Q. Why?

20 A. I couldn't find Mr. Joyce.

21 Q. Were you able to locate and
22 follow up on Darryl Foggy?

23 A. Yes.

24 Q. How?

25 A. I located Mr. Foggy and -- plus,

1 the recovery of the gun. Then, of course,
2 like I said, we interviewed Mr. Foggy.

3 Q. Now, is it common in homicide
4 investigations to potentially have two
5 suspects that are developed?

6 A. Yes.

7 Q. And is it standard procedure in
8 those type of investigations to follow up
9 on both of the suspects?

10 A. Yes.

11 Q. And in this case, were you able
12 to exclude either one of those suspects?

13 A. Yes.

14 Q. Which one?

15 MR. HARTLEY: Objection, Your
16 Honor. I object to the form of the
17 question. Exclude means that that's some
18 sort of conclusion or mental process of
19 this witness.

20 THE COURT: I agree.

21 Q. Which suspect did you eventually
22 sign warrants on?

23 A. Mr. Joyce.

24 MR. POWELL: No further
25 questions.

RE CROSS - EXAMINATION

BY MR. HARTLEY:

Q. Just a couple questions about those number of shots. Mr. Powell has raised the issue there could have been an echo out there, right?

A. Yes, sir.

Q. How many shots were -- how many injury wounds did Mr. Friendly -- James Friendly have, do you know that?

A. He had three injuries.

Q. And wasn't there a vehicle out there that had broken glass or was hit by a bullet in some kind of way?

A. Yes.

Q. Okay. How many times was that vehicle hit?

A. I don't know. I never saw that vehicle.

Q. Do you know from records that it was hit more than once?

A. Yes.

Q. So we are way above three shots right there, aren't we?

A. Yes.

1 MR. HARTLEY: Okay. Thank you.

2 REDIRECT EXAMINATION

3 BY MR. POWELL:

4 Q. Detective, some of those shots
5 that hit Mr. Friendly went all the way
6 through his body and came out the other
7 side, did they not?

8 A. Yes.

9 Q. Could the same three shots that
10 hit him possibly hit the Jeep as well?

11 A. It is possible, yes.

12 MR. POWELL: Nothing further,
13 Judge.

14 RECROSS-EXAMINATION

15 BY MR. HARTLEY:

16 Q. Do you think that's a very
17 minimal probability, like almost
18 impossible, for bullets to be fired in a
19 downward direction to go up and then hit a
20 vehicle? What would you give the
21 probability out of a hundred? What
22 percentage would you give?

23 A. I don't know. I mean, the
24 possibility exists that it could happen.
25 That's the only way I can answer that.

1 MR. HARTLEY: Thank you. No
2 further questions.

3 MR. POWELL: Nothing further.
4 Judge.

(The jury exits the courtroom.)

10 (Brief Recess.)

11 MR. POWELL: The State calls
12 Katherine Richart.

DIRECT EXAMINATION

BY MR. POWELL:

18 Q. Would you state your name for the
19 members of the jury?

20 A. Katherine Richard.

21 Q. And how are you employed, Ms.
22 Richart?

23 A. I'm employed with the Alabama
24 Department of Forensic Sciences, Montgomery
25 Regional Laboratory.

1 Q. What is your job with the
2 Department of Forensic Sciences?

3 A. I'm a forensic scientist
4 specializing in firearms and tool mark
5 identification.

6 Q. Briefly, for the jurors, explain
7 to us what that is?

8 A. Basically, what I do is I look at
9 fire bullets and fire cartridge cases and
10 try to microscopically compare those back
11 to a specific firearm.

12 Q. What training, education or
13 experience have you had to qualify you as a
14 firearms analyst or a tool marks examiner?

15 A. I have a bachelor's degree in
16 science from the University of Alabama at
17 Birmingham. I have trained for
18 two-and-a-half years. Been to the Alabama
19 Department of Forensic Science in the
20 examination of firearms and tool marks
21 evidence. I have attended two one-week
22 courses put on by the California
23 Criminalist Institute. I have attended
24 seven one-week training seminars put on by
25 the Association of Firearms and Tool Marks

1 Examiners. I have attended armored courses
2 put on by Bloch, Smith and Wesson, Savage,
3 Seek (sic) and Colt, and I have attended
4 the FBI Firearms Instructor School and the
5 Certified Instructor in Rifles, Missiles
6 and Shotguns by the FBI.

7 MR. POWELL: Your Honor, we move
8 to qualify Ms. Richart as an expert in
9 firearms analysis and tool mark
10 examination.

11 THE COURT: Okay.

12 Q. Mr. Richart, were you submitted
13 some evidence to examine in the case
14 involving the victim of James Friendly?
15 That tox. number is going to be
16 2002-MM00226.

17 A. Yes, I was.

18 Q. And do you have a file with that
19 same tox. number?

20 A. Yes, I do.

21 Q. And what does that number
22 indicate to you? Which case is this about?

23 A. Well, it is -- our department
24 gives a case number for every case we
25 enter. In this case it was a death case.

1 Q. So anything with this 226 number
2 on it involves the shooting death of James
3 Friendly?

4 A. That is correct.

5 Q. In other words, the firearms and
6 physical evidence you analyzed?

7 A. That is correct.

8 Q. Now I'm going to present to you
9 three casings and a photograph. I need to
10 mark State's 31. Also, State's 21. First
11 off, I think we have been wondering the
12 whole trial, is that weapon safe?

13 A. It is.

14 Q. Is it unloaded?

15 A. Yes, I have.

16 Q. And have you examined it prior to
17 coming in the courtroom today?

18 A. Yes, I did.

19 Q. Did you test fire that weapon?

20 A. Yes, I did.

21 Q. Is it operational? Will it
22 shoot?

23 A. It will.

24 Q. But you made sure it didn't have
25 any bullets in it?

1 A. That's correct.

2 Q. Ms. Richart, I'm going to put
3 State's 15, 16 and 17 on the overhead here
4 so we can see them a little closer.

5 Now, take a look at your records
6 and tell me if these three shell casings,
7 the projectile from State's 31 and a gun
8 were basically the physical evidence you
9 received in this case?

10 A. I am, but may I look at the
11 cartridge cases just to be sure?

12 Q. Sure. Here you go.

13 A. (Witness examining evidence.)

14 Q. While we are doing this, do you
15 recognize State's 31?

16 A. Yes, I do.

17 Q. What is it?

18 A. It is a fired copper jacket
19 bullet.

20 Q. A picture --

21 A. A picture of a fired copper
22 jacket bullet.

23 Q. Does this picture fairly and
24 accurately represent the actual physical
25 object you examined?

1 A. Yes, it does.

2 MR. POWELL: We offer State's 31,
3 Judge.

4 THE COURT: Admitted.

5 (State's Exhibit Number 31
6 admitted into evidence.)

7 Q. Now you have had an opportunity
8 to examine State's 15, 16 and 17, the shell
9 casings.

10 A. That's correct.

11 Q. Are these the actual casings you
12 examined?

13 A. Yes, they are.

14 Q. First, let's start with the
15 projectile, State's 31. Did this bullet
16 come from this gun?

17 A. No, it did not.

18 Q. And now let's go to the shell
19 casings. Did you examine those shell
20 casings?

21 A. Yes, I did.

22 Q. Did any three of those shell
23 casings come from this gun, State's 21?

24 A. They were not fired in the
25 chamber of that firearm, no, sir.

1 Q. How do you know that?

2 A. When I received the Franklin
3 Jennings pistol and I test fired that and
4 collected the fired bullets and the fired
5 cartridge cases and then microscopically
6 compared those back to the cartridge cases
7 and the bullets that were submitted in this
8 case, I was able to determine
9 microscopically that these particular
10 cartridge cases, State's Exhibits 15, 16
11 and 17, were not fired in the chamber of
12 State's Exhibit 21.

13 Q. In case you need to refer to any
14 of it. So scientifically that gun didn't
15 shoot any of these bullets; is that right?

16 A. The cartridge cases were not
17 fired in the chamber of that firearm nor
18 was the bullet, State's Exhibit 31, which
19 is the picture of the bullet, fired through
20 the barrel of this firearm, that is
21 correct.

22 Q. Now what can you tell us about
23 the projectile itself?

24 A. I can tell you that the copper
25 jacket and bullet that I received was a

8 Q. And is the pistol in front of you
9 a High Point?

10 A. No, it's not.

13 Q. And in this case it was a High
14 Point type of weapon?

15 A. Yes, it was.

16 Q. What kind of caliber did you say
17 this was?

18 A. A thirty-eight nine millimeter.

Q. What does that mean?

20 A. That the bullet caliber, the
21 diameter of the bullet measured .355s of an
22 inch, which is consistent with a nine
23 millimeter or a thirty-eight class caliber
24 firearm.

Q. Why can't you differentiate

1 between a thirty-eight or a nine
2 millimeter?

5 Q. Now, this -- does High Point make
6 an automatic weapon consistent with a nine
7 millimeter?

8 A. Yes, they do. Many.

9 Q. Many?

10 A. (Witness nodding head
11 affirmatively.)

12 Q. And the lands and grooves on that
13 particular projectile in this photograph
14 match the same from various models from
15 High Point automatic weapons?

19 Q. And that, of course, would be
20 different from the lands and grooves
21 produced on the test bullet from this gun,
22 State's 21?

23 A. That is correct.

24 Q. Now, can you determine whether or
25 not the same gun -- well, let me ask you

1 this: Let's talk about the shell casings.
2 Did you test the shell casings?

3 A. Yes, I did.

4 Q. What can you tell us about the
5 shell casings?

6 A. That these -- I received two
7 fired Federal brand and one fired Remington
8 brand cartridge case. They were all
9 caliber nine millimeter, and I
10 microscopically compared those to each
11 other and was able to determine that they
12 were all fired in the chamber of the same
13 firearm.

14 Q. Okay. That firearm, was that
15 State's 21?

16 A. No, it was not.

17 Q. The marks on these shell casings
18 did not match that gun in front of you?

19 A. That is correct.

20 Q. Okay. How can you tell about a
21 shell casing whether or not it came from a
22 particular gun?

23 A. Again, during the gun
24 manufacture, there is a process that is
25 used to make the actual groove to the

1 firearm, which is when a cartridge is fired
2 where the cartridge case is -- the pressure
3 of the powder burning which pushes the
4 bullet down the barrel with an equal and
5 opposite pressure, the cartridge case is
6 going to slam up against the breech.

7 Whatever tool was used to make that breech
8 space, it has microscopic marks as well,
9 along with the firing pin, however the
10 firing pin is manufactured, and it leaves a
11 unique mark on a cartridge case.

12 Q. Okay. Now you spoke of a firing
13 pin. How do you look to where the firing
14 pin left a mark?

15 A. How do I look?

16 Q. Yes. Can you see it on the shell
17 casing itself?

18 A. You can.

19 Q. Okay. Can you point that out to
20 us?

21 A. Sure.

22 Q. You can just use this. Let's
23 make it look bigger.

24 A. This here is the head of the
25 cartridge case where it says nine

1 millimeter Luger, and I believe this is an
2 SE. This is the Federal brand cartridge
3 case. This right here is the primer of the
4 cartridge case, which is what the firing
5 pin hits, which this is the firing pin
6 indentation right here.

7 The firing pin hits here which
8 ignites the primer, which is what ignites
9 the powder that burns. So the whole breech
10 of this can be marked by the breech facing
11 the firearm. But most of the microscopic
12 marks that we look at are on the primer
13 because it is of a softer metal.

14 Q. Now, Ms. Richart, does the fact
15 that these three shell casings, two come
16 from one brand and one is another, does
17 that indicate more than one firearm
18 present?

19 A. No, it does not.

20 Q. Why not?

21 A. Because you can load any
22 ammunition manufacturer in a particular
23 firearm.

24 Q. Is there anything about those
25 three casings that would definitively

1 determine whether they came from one or
2 more firearms?

3 A. These three fired cartridge cases
4 were all fired from the chamber of the same
5 firearm.

6 MR. POWELL: I think that's all
7 the questions I have for Ms. Richart.

8 MR. HARTLEY: No cross.

9 THE COURT: Thank you, ma'am.

10 MR. POWELL: The State calls Dr.
11 Ben Bristol, Judge.

12 DR. BEN BRISTOL,
13 having been first duly sworn, was examined
14 and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. POWELL:

17 Q. Could you state your name for the
18 jury?

19 A. My name is Dr. Ben Bristol.

20 Q. Dr. Bristol, how are you
21 currently employed?

22 A. I work for the National Medical
23 Examiner's office.

24 Q. And at one time were you employed
25 by the Alabama Department of Forensic

1 would, explain to the jury what is the
2 difference between forensic medicine and
3 normal medicine?

4 A. Forensic medicine concerns itself
5 with the examination of dead people with
6 doing autopsies, determines causes and
7 manners of death, whether it is a natural
8 death or a heart attack or a hanging or a
9 -- all different sorts. We concern
10 ourselves primarily with violent,
11 suspicious or unnatural deaths.

12 MR. POWELL: Your Honor, at this
13 point, we would like to --

14 Q. Let me show you this, Doctor. I
15 have marked this as Exhibit 20-A. Do you
16 recognize that?

17 A. Yes, sir.

18 Q. Is this your curriculum vitae?

19 A. Yes, it is.

20 Q. And is this listing of your
21 credentials basically a resume?

22 A. Yes, sir.

23 MR. POWELL: We offer State's
24 20-A, Your Honor.

25 THE COURT: It's admitted.

1 (State's Exhibit Number 20-A

2 admitted into evidence.)

3 MR. POWELL: Judge, at this point
4 we move to qualify Dr. Bristol as an expert
5 in autopsy examination.

6 THE COURT: Okay.

7 MR. HARTLEY: Have you
8 established how many times he has done
9 this?

10 Q. How many autopsies have you
11 performed, Doctor?

12 A. I performed perhaps six to seven
13 hundred autopsies, at least that number.
14 And maybe a hundred and fifty homicides.

15 MR. POWELL: Again, we renew our
16 motion to qualify him as an expert.

17 THE COURT: Okay.

18 Q. Now, Doctor, were you the medical
19 examiner in the case involving the shooting
20 death of James Friendly?

21 A. Yes, sir.

22 Q. And did you perform the autopsy
23 in that case?

24 A. Yes, I did.

25 Q. And as a result of your autopsy

1 did you prepare a record and make medical
2 findings related to the cause of death and
3 other observations you made in making that
4 autopsy?

5 A. Yes, sir.

6 Q. Now I'm going to show you State's
7 Exhibit 20. Do you recognize that?

8 A. Yes, I do. That is a diagram I
9 prepared of the body of Mr. Friendly.

10 Q. And it is a multipage or eight
11 page exhibit. Can you flip through there.
12 And incorporated in with that diagram is a
13 series of photographs with some lines and
14 arrows. Do you recognize those
15 photographs?

16 A. Yes, I recognize these. These
17 are photographs and the diagram I did of
18 the body of Mr. Friendly.

19 Q. And as for the photographs and
20 diagrams, are they fair and accurate
21 representations of the manner of the body
22 during the autopsy you performed?

23 A. Yes, they are, sir.

24 Q. And would the lines and arrows
25 assist you in explaining to the jury your

1 findings for an autopsy report?

2 A. Yes. The lines and the arrows
3 designate -- connect words that connect to
4 the wounds on the body.

5 MR. POWELL: We offer State's
6 Exhibit, Judge.

7 THE COURT: Which number is
8 that?

9 MR. POWELL: 20.

10 (State's Exhibit Number 20
11 admitted into evidence.)

12 Q. Now, Doctor, I'm going to refer
13 to a blowup of State's 20 on the screen.
14 Is this the diagram you prepared?

15 A. Yes, sir, it is.

16 Q. Now, Doctor, three circles just
17 came up on the diagram. What do those
18 indicate?

19 A. Those indicate entry wounds.

20 Q. Now, entry wounds from what?

21 A. Entry wounds from a bullet, sir.

22 Q. Gunshot wounds?

23 A. Yes. Entry gunshot wounds.

24 Q. So how many gunshot wounds were
25 you able to identify on the body of James

2 A. There were three entrance gunshot
3 wounds.

4 Q. Did you observe any other major
5 trauma to Mr. Friendly other than, you
6 know, medical treatment, that kind of
7 thing?

8 A. I am just reviewing my report
9 here and, no, there was no -- there was no
10 evidence of any trauma to the mouth or to
11 the hands.

Q. Basically three gunshot wounds?

15 Q. Two exits?

16 A. Two exits, yes.

21 A. It's a photograph of the entrance
22 gunshot wound on the left side there of his
23 torso.

24 Q. The blue circle that just
25 appeared, what is that circling?

1 A. That's an exit on the right side
2 of the abdomen.

3 Q. And the photograph?

4 A. Shows the tattoo and the exit
5 wound there with a ruler placed slightly
6 over it.

7 Q. And that photograph, what is that
8 a picture of?

9 A. It's another picture of the
10 wound.

11 Q. Dr. Bristol, how can you look at
12 this entrance wound and exit wound and tell
13 us that one is an entrance as opposed to an
14 exit?

15 A. Sure. Take, for example, the
16 entrance wound, the one in the red circle.
17 You will see that there is a red -- you can
18 see that there is a red to black rim around
19 the central defect that is a little bit
20 more pink. That's very characteristic of
21 an entrance wound. That's what is referred
22 to as marginal rating. That's where a
23 bullet pushed in through the skin.

24 The exit wound on the other side,
25 the one surrounded by blue is a little more

1 -- it is not as round as the other wound.
2 It is more -- it is more of a laceration
3 kind of. That's how we tell it is an exit
4 wound.

5 Q. Now, Doctor, did you examine the
6 pathway the bullet traveled through Mr.
7 Friendly's body from this wound?

8 A. Yes, sir.

9 Q. And from that examination of the
10 pathway, can you scientifically determine
11 these two wounds are connected?

12 A. Yes.

13 Q. Now, Doctor, I want to talk about
14 -- another diagram came up with some
15 arrows drawn across it. Did you prepare
16 that diagram as well?

17 A. Yes, sir.

18 Q. And what do the red circles again
19 indicate?

20 A. The entrance wounds.

21 Q. And the blue circles?

22 A. The exit gunshot wound.

23 Q. Now, the green arrow, what does
24 that indicate?

25 A. More are or less the path of the

Part 4 of 5

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CERTIFICATION

I hereby certify that the preceding imaged records and documents
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the State of Alabama.

This the 19th day of January, 2005.

Signed:

Melissa A. Martin

Notary:

Coleen F. Gibson

Coleen F. Gibson
Notary Public
Commission expires 06/11/06